

82 - 2012

Office-Supreme Court, U.S.
FILED

MAY 18 1983

NO. _____

ALEXANDER L. STEVENS,
CLERK

IN THE
SUPREME COURT OF THE UNITED
STATES

1982 TERM

ALBERT T. EHLERS

v.

CITY OF DECATUR, GEORGIA

* * *

ON APPEAL FROM UNITED STATES DISTRICT
COURT, NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION; ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT.

* * *

BRIEF OF APPELLANT
ALBERT T. EHLERS

ALBERT T. EHLERS, PRO SE
3142 ARGONNE DR. N. W.
ATLANTA, GA., 30305
TELEPHONE 404-237-9514

QUESTIONS PRESENTED FOR
REVIEW

Whether an attorney, who as a pro se successful litigant in an action for deprivation of his civil rights (42 USC 1983), is barred from the recovery of attorney fees for his time and efforts under 42 USC Sec. 1988.

Whether, the facts that the attorney tried, but could not obtain other legal representation are of significance in a construction of 42 USC Sec. 1988.

Whether, the trial court erred in partially denying an award pursuant to 42 USC Sec. 1988 to outside counsel for his time in litigating the award of attorney fees.

Whether, when such legal services are required to maintain such a lawsuit and to obtain a reversal of the District Court by the Court of Appeals, the wrongdoer is entitled to a windfall in not being required to pay for such services pursuant to 42 USC Sec. 1988 simply because they were not performed by another attorney other than the pro se litigant attorney.

Whether the chances of more litigation
are outweighed by chances of fewer civil rights
violations and the effect of F.R.C.P. 68 in
balancing the issue of allowing pro se
attorney compensation under 42 USC Sec. 1988.

CERTIFICATE OF INTERESTED
PERSONS

Certificate is hereby made that the
following are all of the persons who may have
a direct interest in the outcome of this case:

1.

Albert T. Ehlers
3142 Argonne Dr., N. W.
Atlanta, Georgia, 30305

2.

Robert John Genins, Jr. Esquire
Box 14303
Atlanta, Ga., 30324

3.

City of Decatur, Georgia
c/o H. A. Stephens, Esquire
Arnall & Stephens
Suite 200

236 Sycamore Street
Decatur, Georgia, 30030

In addition all those persons and/or entities which may deprive others of their Constitutional rights and those attorneys who may seek to vindicate same by appearing in propria persona may have an interest in the outcome of this case.

TABLE OF CONTENTS AND CITATIONS

	Page
Questions Presented for Review	1
Certificate of Interested Persons	2, 3
Opinions and/or Judgments Rendered in the Case	4
Jurisdiction	4
Statement of the Case	5
Reasons for Granting the Writ	7
Conclusion	8

CITATIONS:

68 F.R.C.P	2
42 USC Sec. 1983	1, 5, 8
42 USC Sec. 1988	1, 2, 7, 9
B&G Electric Co. v. G.E. Bass & Co., Inc. 252 F. 2d 698, 700 (5th Cir. 1958)	7
Embry v. Palmer	7, 8
Gilfillan v. McKee (1895) 169 US 303, 312, 16 S.Ct. 6, 40 L.Ed. 161(1)	7a, 8
Kaiser v. Standard Oil Co. 89 F 2d 58,59 (5th Cir. 1937)	7a, 8
Knighton v. Watkins 616 F 2d 795, 799 (5th Cir. 1980)	10

McGowan v. King, Inc. 616 F 2d 745, 747 (5th Cir. 1980)	8
Shaffer v. Great American Indem. Co 147 F 2d 981 (5th Cir. 1945)	7a, 8
Snow v. Hazelwood 179 F. 182 (5th Cir. 1910)	7a, 8
United States v. Hougham (1960), 364 US 310, 81 S.Ct. 13, 5 L.Ed. 2d 8	8

APPENDICES:

Appendix A, Judgment and Order of District Court	1, 2
Appendix B, Opinion of Court of Appeals Eleventh Circuit	8
Appendix C, Opinion of Court of Appeals, Eleventh Circuit, Denying Rehearing	13
Certificate of Service	15

OPINIONS AND/OR JUDGMENTS
RENDERED IN THE CASE

The order or judgment of the U. S. District Court was entered on Dec. 21, 1981 and appears at Appendix A in Appendices.

The order of the Court of Appeals, Eleventh Circuit was entered on Jan. 3, 1983 and appears at Appendix B in Appendices.

The order of the Court of Appeals, Eleventh Circuit, denying rehearing was entered on Feb. 25, 1983 and appears at Appendix C in Appendices.

JURISDICTION

This petition for certiorari was filed less than 90 days from date of aforesaid. The jurisdiction of the Court is invoked pursuant to 28 USC Sec. 1254 (1).

STATEMENT OF THE CASE

Record entails one volume and a transcript. References herein shall be to the record and page number as "R p._" and to the transcript and page number as "T p._".

Defendant enacted an ordinance prohibiting an owner of property from placing a "For Rent" sign on his property. After three attorneys refused to handle Plaintiff's case he filed suit pro se, alleging Defendant had removed his "For Rent" sign pursuant to said ordinance in violation of his civil rights. Defendant denied same. (R P. 4-5,10, 157.)

The District Court summarily adjudicated the case in favor of Defendant's contention that a condition precedent to any suit against a municipality was a Georgia statute requiring ante litem notice. R p. 31-32.

The Fifth Circuit reversed holding the statute was an exhaustion of remedies requirement which a state could not use to burden access to the federal courts in suits seeking damages in a 42 USC Sec. 1983 action.

R p. 38-40.

Throughout this time, December, 1977 thru March 1980, and thereafter until the case was calendered for trial, Plaintiff, who is an attorney (R p. 115), represented himself.

The jury returned a verdict upon which judgment was entered for the full amount Plaintiff contended he had lost as rentals because of the sign ordinance designed to frustrate black persons from moving into the city. R p. 47, 92 and 93.

That amount was \$990. Legal fees were not submitted to the jury. T p. 39.

Defendant continued to require legal services by a motion for judgment notwithstanding the verdict and in opposition to Plaintiff's request for attorney fees for himself and for his counsel. R p. 94-106 and 110-182.

Defendant never made any offer to Plaintiff. R p. 157.

The District Court's opinion was that although Plaintiff was an attorney he was/

from any recovery under 42 USC Sec. 1988 for his pro se work in litigation as a matter of law. R p. 173, T p. 2-3. The trial court stated Plaintiff had proceeded very ably and deserved a considerable amount of credit. T p. 3, and 39.

REASONS FOR GRANTING THE WRIT

The panel decision in the Circuit Court (holding that the appeal of the lower court's denial of an award for pro se attorney fees (appellant) was barred by appellant's acceptance of attorney fees awarded for services performed by another) is contrary to the following decisions of the Supreme Court of the United States and precedents of the Fifth Circuit Court of Appeals of the United States; and in order to follow the former's mandate and the latter's precedents and maintain uniformity of decisions a Writ of Certiorari should be granted.

B & G Electric Co. v. G. E. Bass & Co., Inc., 252 F.2d 698, 700 (5th Cir. 1958);
Embry v. Palmer, 107 U.S. 3,8 (1882);

Gilfillan v. McKee, 169 U. S. 303, 312,
16 S. Ct. 6, 40 L.Ed. 161(1)(1895);

Kaiser v. Standard Oil Co., 89 F.2d
58,59 (5th Cir. 1937);

Shaffer v. Great American Idem. Co.,
147 F.2d 981, (5th Cir. 1945);

Snow v. Hazelwood, 179 F 182 (5th Cir.
1910).

CONCLUSION

The amount paid into court by Defendant and paid to Plaintiff "is not in controversy in this case". Gilfillan v. McKee, & Embry v. Palmer, *supra*.

The inadequacy of the award to Plaintiff's retained counsel has not been waived by the payment. There is nothing to indicate it was paid into court as an attempted accord and satisfaction. United States v. Hougham, *supra*. (Please also compare McGowan v. King, inc., 616 F.2d 745, 747 (5th Cir. 1980)

Plaintiff was entitled to what was paid "irrespective of the outcome of the appeal" and the legal services for which compensation was paid are not involved. B&G Electric Co. v. G. E. Bass & Co., Inc., Kaiser v. Standard Oil Co., Snow v. Hazlewood, Shaffer v. Great American Indem. Co., *supra*.

Manifestly, the purpose of 42 USC Sec. 1983 is to provide redress for governmental interferences with constitutional liberties.

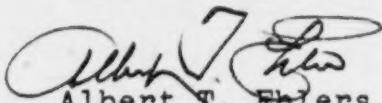
Petitioner respectfully submits, it could not have been the intention of Congress when enacting 42 USC Sec. 1988 to exclude attorney pro se litigants from its comprehension and give violators of constitutional rights a windfall of not having to pay attorneys fees for their prosecution simply because an outside attorney did not handle the case for the prosecutor.

Petitioner respectfully submits this Court should decide the unprecedented issue that 42 USC Sec. 1988 does not preclude the award of pro se attorney fees to an attorney litigant and that the time required to establish such a principle is compensable.

Petitioner respectfully submits that under the facts of this case, when he could not obtain outside counsel, there should be no reason to not allow him compensation pursuant to 42 USC Sec. 1988 for the time required of him by Defendant to maintain this case.

At any time Defendant could have made a FRCP 68 offer. Defendants "are entitled to resist vigorously. The right to determined contest, however, has a concomitant duty; the obligation to pay reasonably for the effort that a defense exacts from opposing counsel if the claim proves to be meritorious". Knighton v. Watkins, 616 F 2d 795, 799 (5th Cir. 1980).

Respectfully submitted:



Albert T. Ehlers
Pro Se

3142 Argonne Dr. N. W.
Atlanta, Ga. 30305
May 27, 1983.